

TITLE 59: MENTAL HEALTH
CHAPTER I: DEPARTMENT OF HUMAN SERVICES
PART 130
RECOVERY AND MENTAL HEALTH TAX CREDIT

Section

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AUTHORITY: Implementing Section 3-10 and 3-15 and authorized by Section 3-25 of the Recovery and Mental Health Tax Credit Act [35 ILCS 50].

SOURCE: Former Part 130 repealed at 16 Ill. Reg. 15993, effective October 5, 1992; new Part 130 adopted at 47 Ill. Reg. _____, effective _____.

Section 130.10 Purpose

The Department is tasked by the Recovery and Mental Health Tax Credit Act [35 ILCS 50] with providing tax credit awards to certain qualified employers who employ eligible individuals diagnosed with a mental illness and/or substance use disorder to provide additional employment opportunities and expand the pool of potential workers in Illinois.

Section 130.20 Definitions

The following definitions are applicable to this Part.

"Act" means the Recovery and Mental Health Tax Credit Act [35 ILCS 50].

"Applicant" means a qualified employer who submits an application to the Department for the tax credit established under this Act.

"Certificate" means the tax credit certificate issued by the Department under Section 3-15 of the Act.

"Credit" means the amount awarded by the Department to a qualified employer by issuance of a certificate under Section 3-15 of the Act.

"Department" *means the Department of Human Services.* [35 ILCS 50/3-10]

"Eligible individual" *means an individual with a substance use disorder or an individual with a mental illness who is in a state of wellness and recovery.* [35 ILCS 50/3-10]

"Mental illness" is defined in Section 1-129 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-129] as *a mental, or emotional disorder that substantially impairs a person's thought, perception of reality, emotional process, judgment, behavior, or ability to cope with the ordinary demands of life, but does not include a developmental disability, dementia or Alzheimer's disease absent psychosis, a substance use disorder, or an abnormality manifested only by repeated criminal or otherwise antisocial conduct.*

"Newly hired" means an employee first employed by an applicant after January 1, 2023, or any employee that was released from employment prior to January 1, 2023 and re-hired on or after January 1, 2023. The term "newly hired" does not include:

A person who was previously employed in Illinois by the applicant or a related qualified employer prior to January 1, 2023, except for any employee who was released from employment prior to January 1, 2023;

Any individual who has a direct or indirect ownership interest of at least 5 percent in the profits, capital, or value of the applicant or a related qualified employer;

An employee of the applicant who was previously employed in Illinois by the applicant or a related qualified employer and whose employment was shifted to the applicant after the applicant applied for the tax credit certificate.

"Qualified employer" *means an employer operating within the State that has received a certificate of tax credit from the Department after the Department has determined that the employer:*

Provides a recovery supportive environment for their employees evidenced by a formal working relationship with a substance use disorder treatment provider or facility or mental health provider or facility, each as may be licensed or certified within the State of Illinois, and providing reasonable

accommodation to the employees to address their substance use disorder or mental illness at no cost or expense to the eligible individual; and

Satisfies all other criteria in this Section and established by the Department to participate in the recovery tax program created hereunder.
[35 ILCS 50/3-10]

"Related qualified employer" means a person that, with respect to the applicant during any portion of the incentive period, is any one of the following:

An individual, if the individual and the members of the individual's family (as defined in section 318 of the Internal Revenue Code) own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the profits, capital, stock, or other ownership interest in the applicant.

A partnership, estate, or trust and any partner or beneficiary, if the partnership, estate, or trust and its partners or beneficiaries own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the profits, capital, stock, or other ownership interest in the applicant.

A corporation, and any party related to the corporation in a manner that would require an attribution of stock from the corporation under the attribution rules of section 318 of the Internal Revenue Code, if the applicant and any other related member own, in the aggregate, directly, indirectly, beneficially, or constructively, at least 50% of the value of the corporation's outstanding stock.

A corporation and any party related to that corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of section 318 of the Internal Revenue Code, if the corporation and all such related parties own, in the aggregate, at least 50% of the profits, capital, stock, or other ownership interest in the applicant.

A person to or from whom there is attribution of stock ownership in accordance with section 1563(e) of the Internal Revenue Code, except that for purposes of determining whether a person is a related member under this subsection, "20 percent" shall be substituted for "5 percent" whenever "5 percent" appears in section 1563(e) of the Internal Revenue Code.

"State of wellness and recovery" means *there is an abatement of signs and symptoms that characterize active substance use disorder or mental illness, and that the individual has demonstrated that they have completed a course of*

treatment or are currently in receipt of treatment for such substance use disorder or mental illness. [35 ILCS 50/3-10]

"Substance use disorder" is defined in Section 1-10 of the Substance Use Disorder Act [20 ILCS 301/1-10] as a spectrum of persistent and recurring problematic behavior that encompasses 10 separate classes of drugs: alcohol; caffeine; cannabis; hallucinogens; inhalants; opioids; sedatives, hypnotics and anxiolytics; stimulants; and tobacco; and other unknown substances leading to clinically significant impairment or distress.

"Taxpayer" means any individual, corporation, partnership, trust, or other entity subject to the Illinois income tax. For the purposes of this Act, two individuals filing a joint return shall be considered one taxpayer. [35 ILCS 50/3-10]

Section 130.30 Qualified Employer Determination

- a) *To be a qualified employer, an employer must apply annually to the Department to claim a credit based upon eligible individuals employed during the preceding calendar year, using the forms prescribed by the Department. [35 ILCS 50/3-15(b)]*
- b) *To be approved for a credit pursuant to the Act, the employer must:*
 - 1) *Agree to provide to the Department the information necessary to demonstrate that the employer has satisfied program eligibility requirements and provided all information requested or needed by the Department, including the number of hours worked by the eligible individual and other information necessary for the Department to calculate the amount of credit permitted; and*
 - 2) *Agree to provide names, employer identification numbers, amounts that the employer may claim, and other information necessary for the Department to calculate any tax credit. [35 ILCS 50/3-15(b)]*
- c) *A qualified employer must provide a recovery-supportive workplace environment, as evidenced by both of the following programs or practices:*
 - 1) *A documented working relationship to provide treatment or support to employees in recovery in partnership with a local mental health and/or substance use disorder treatment organization certified or licensed by the State of Illinois; and*

- 2) Documented policies or programs to provide reasonable accommodations to employees to address their substance use disorder and/or mental illness, at no cost to the employee.
- d) A qualified employer may also provide additional evidence of their recovery-supportive workplace environment, including one or more of the following:
 - 1) Certification as a recovery-supportive workplace by a non-profit, third-party recovery organization;
 - 2) A documented training program for management and human resources personnel on supporting employees in recovery; and/or
 - 3) Engagement in community-based prevention or recovery-focused activities at least once per year.
- e) The qualified employer must provide documentation establishing its recovery-supportive workplace environment to the Department's satisfaction at the time of its first application for the tax credit. The Department may request additional documentation, if needed, to determine whether a qualified employer provides a recovery-supportive workplace environment. The Department will determine whether a qualified employer provides a recovery-supportive workplace environment at the time of application.
- f) After being approved for a tax credit, the qualified employer can attest that they continue to offer a recovery-supportive workplace environment in future applications without submitting additional supporting documentation. The Department reserves the right to request additional documentation for any application or to audit any qualified employer's recovery-supportive workplace implementation.

Section 130.40 Eligible Individuals

- a) An eligible individual must be:
 - 1) Diagnosed with a substance use disorder and/or mental illness; and
 - 2) In a state of wellness and recovery from said substance use disorder and/or mental illness. This includes the eligible individual reporting that they are receiving treatment for, or have completed a course of treatment for, their substance use disorder and/or mental illness.

- 213 b) The qualified employer is solely responsible for determining whether an eligible
214 individual meets the criteria under subsection (a). The qualified employer must
215 maintain confidential documentation supporting this determination, which may be
216 requested by the Department for audit purposes.
217
- 218 c) The qualified employer must maintain the confidentiality of the eligible
219 individual's protected health information consistent with all applicable laws and
220 regulations. The qualified employer must take steps to ensure that the eligible
221 individual's protected health information is not disclosed to other employees or to
222 members of the public.
223
- 224 d) The eligible individual's disclosure of their substance use disorder and/or mental
225 illness must be completely voluntary. The qualified employer must securely
226 maintain documentation, such as a release of information, confirming that the
227 eligible individual's health information was disclosed voluntarily.
228
- 229 e) *A relapse in an individual's state of wellness shall not make the individual*
230 *ineligible, so long as the individual shows a continued commitment to recovery*
231 *that aligns with an individual's relapse prevention plan, discharge plan, or*
232 *recovery plan. [35 ILCS 50/3-10]*
233
- 234 f) The eligible individual must be newly hired by the qualified employer on or after
235 January 1, 2023.
236
- 237 g) The qualified employer may only determine an employee's status as an eligible
238 individual after the employee is hired, rather than before hiring.
239
- 240 h) *The eligible individual must have been employed by the qualified employer in the*
241 *State of Illinois for a minimum of 500 hours during the calendar year in which*
242 *they are hired. [35 ILCS 50/3-15(c)]*
243
- 244 i) *The tax credit qualification period may only begin on the date the eligible*
245 *individual is hired by the qualified employer. The qualification period will end on*
246 *December 31 of that calendar year or the date that the eligible individual's*
247 *employment with the qualified employer ends, whichever occurs first. [35 ILCS*
248 *50/3-15(c)]*
249
- 250 j) *Only one tax credit may be awarded for any eligible individual while employed by*
251 *the same or related qualified employer. [35 ILCS 50/3-15(c)]*
252
- 253 k) *The hours of employment of two or more eligible individuals may not be*
254 *aggregated to reach the minimum number of hours. [35 ILCS 50/3-15(c)]*
255

- l) If an eligible individual has worked more than 500 hours but fewer than 2,000 hours between the date of hiring and December 31 of the same year, a qualified employer can elect to compute and claim a credit for such eligible individual in that year based on the hours worked by December 31. Alternatively, the qualified employer may choose to count the hours worked between the date of hiring and December 31 of the following year, or the last day of employment, in claiming the credit for the year following the date of hiring.

Section 130.50 Application Format

- a) The Department will make application materials available on its website. The submission of an application does not commit the Department to award assistance or to pay any costs incurred by the applicant in the preparation of an application.
- b) All applications must be submitted electronically in a secure format to the Department following the instructions provided by the Department. The application shall include, at a minimum:
 - 1) The name, address, email, and telephone number of the employer; key contact person name and title; and company tax ID, such as Federal Employer Identification Number (FEIN) or Social Security Number (SSN).
 - 2) The qualified employer's assertion that they meet the criteria as a recovery-supportive workplace.
 - 3) The name of each eligible individual employee; the date each employee was hired; and the number of hours worked by the eligible employee since they were hired.
 - 4) Any other provisions or information that the Department determines to be necessary to facilitate the Department's processing or evaluation of the application.
- c) The applicant is responsible for the accuracy of all data, information, and documentation submitted to the Department.
- d) Any materials or data collected by the Department or the Department of Revenue shall be deemed confidential unless such materials are required to be released by State or federal law.

- e) *Any individual or patient-specific information collected by the Department or the Department of Revenue shall not be subject to public disclosure or Freedom of Information Act requests. [35 ILCS 50/3-15(i)]*

Section 130.60 Application Review

- a) The Department will accept applications for each year's tax credits beginning on January 1 of the following year and ending on March 1 of the same year.
- b) The Department will only accept applications submitted pursuant to the requirements outlined in Section 130.50.
- c) After receiving an application, the Department will confirm receipt of the application in writing.
- d) The Department will review all applications received during the acceptance period to verify an employer's status as a qualified employer and the eligibility of each individual for whom a credit is being claimed.
- e) The Department may request additional information during the review process if needed to confirm an employer's or an individual's eligibility.
- f) The Department will complete its review of all applications by March 31 of each year and determine the credit amount following the process outlined in Section 130.80.
- g) The Department is not responsible for any errors or delays in providing an application denial or approval caused by errors in any of the application information provided by the applicant or by any technical problems beyond the Department's control.

Section 130.70 Application Approval or Denial

- a) Applicants will be notified in writing of the Department's approval or denial of all completed applications.
- b) If the Department denies the application for a credit, it will specify the reasons for the denial.
- c) If the Department approves the application for a credit, it will issue a certificate of tax credit to the qualified employer following the procedures in Section 130.90.

- d) Applicants have the right to appeal a denial. The applicant must submit a written notice for an appeal to the Department. This notice should be received by the Department within 30 calendar days after the applicant receives the notice of denial. The appeal must contain a clear statement disputing the reasons for the denial. The notice of appeal should be mailed to:

Recovery and Mental Health Tax Credit Coordinator
Illinois Department of Human Services, Division of Mental Health
401 S Clinton St.
Chicago, IL 60607

- e) The Department will convene an appeal hearing within 30 days of receiving the notice of appeal. The appeal hearing committee will consist of the Recovery and Mental Health Tax Credit Coordinator or their designee, the Division of Mental Health Deputy Director of Wellness and Recovery Services or their designee, and the Division of Substance Use Prevention and Recovery Behavioral Health Advisor or their designee.
- f) The applicant will be notified of the hearing by phone and mail. The applicant may be present to provide written or verbal objections to the denial at the time of the hearing.
- g) The Department will issue its written final decision to the applicant within five working days after the appeal hearing. All final decisions shall specify that they are final and subject to the Illinois Administrative Review Law [735 ILCS 5/Art. III]. The final decision shall be served on parties, or their agents appointed to receive service of process, either personally or by registered or certified mail. [5 ILCS 100/10-50].

Section 130.80 Determination of Credit Amount

- a) The Department shall determine the amount of credit awarded under the Act.
- b) *If Department criteria and all other requirements are met, a qualified employer shall be entitled to a tax credit equal to the product of \$1 and the number of hours worked by each eligible individual during the eligible individual's period of employment with the qualified employer. [35 ILCS 50/3-15(d)]*
- c) *The tax credit awarded under this Act may not exceed \$2,000 per eligible individual employed by the qualified employer in this State. [35 ILCS 50/3-15(d)]*
- d) *The aggregate amount of all credits the Department may award under this Act in any calendar year may not exceed \$2,000,000. [35 ILCS 50/3-15(e)]*

- e) *In determining the amount of tax credit that any qualified employer may claim, the Department shall review all claims submitted for credit by all employers and, to the extent that the total amount claimed by employers exceeds the amount allocated for this program in that calendar year, shall issue tax credits on a pro rata basis corresponding to each qualified employer's share of the total amount claimed. [35 ILCS 50/3-15(d)]*
- f) *A taxpayer who is a qualified employer who has received a certificate of tax credit from the Department shall be allowed a credit against the tax imposed equal to the amount shown on such certificate of tax credit. [35 ILCS 50/3-15(f)]*
- g) *The credit must be claimed in the taxable year in which the tax credit certificate is issued. The credit cannot reduce a taxpayer's liability to less than zero. If the amount of the credit exceeds the tax liability for the year, the credit may not be carried forward. [35 ILCS 50/3-15(g)]*

Section 130.90 Tax Credit Certificate

- a) *The Department shall award the tax credit by issuance of a certificate of tax credit to the qualified employer. [35 ILCS 50/3-15(a)]*
- b) The certificate will include the following:
 - 1) The name, taxpayer identification number, and address of the qualified employer;
 - 2) The date on which the certificate is issued;
 - 3) The number of eligible individuals employed and the total number of hours worked by eligible individuals;
 - 4) The credit amount; and
 - 5) Any other information the Department determines to be appropriate.
- c) *The qualified employer will present the certificate of tax credit to the Department of Revenue by attaching the certificate to its tax return, as a credit against the qualified employer's income tax liability in accordance with the Illinois Income Tax Act. [35 ILCS 50/3-15(a)]*

- 423 d) *The Department shall maintain an electronic listing of the certificates issued by*
424 *which the Department of Revenue may verify tax credit certificates issued. [35*
425 ILCS 50/3-15(a)]